

CEFERINA RAMOS, ET ALS., PETITIONERS, VS. ANATOLIO C. MANALAC, OR HIS SUCCESSOR, AS JUDGE OF THE COURT OF FIRST INSTANCE OF PANGASINAN, SECOND BRANCH, AND FELIPE LOPEZ, RESPONDE...

G. R. No. L-2610. June 16, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari seeking the annulment of an order of the Court of First Instance of Pangasinan dated September 22, 1947, placing one Felipa Lopez in possession of two (2) parcels of land claimed to belong to petitioners, and of the decision rendered by the same court on August 24, 1939, ordering the foreclosure of the mortgage executed on said property to satisfy the payment of an obligation.

The facts involved in this case are: on August 31, 1933, Victoriano, Leonardo, Vicenta, Isabina, Gregoria, Ceferina, Jose and Geronimo, all surnamed Ramos, executed a power of attorney in favor of their brother Eladio Ramos giving the latter authority to encumber, mortgage and transfer in favor of any person a parcel of land situated in Bayambang, Pangasinan. On August 9, 1934, by virtue of the power of attorney above mentioned, Eladio Ramos executed in favor of one Romualdo Rivera a mortgage on the aforesaid property, together with another parcel of land, to guarantee the payment of a loan of P300, with interest thereon at the rate of 12% per annum. When Eladio Ramos failed to pay the obligation on its date of maturity, Romualdo Rivera, the mortgagee, filed an action to foreclose the mortgage, making as parties-defendants the herein petitioners, brothers and sisters of Eladio Ramos (civil case No. 7668). The summons was served only upon Eladio Ramos, who acknowledged the service in his own behalf and in that of his co-defendants. Eladio Ramos engaged the services of Attorney Lauro C. Maiquez, who put in his appearance for all the defendants, and submitted an answer in their behalf. After trial, at which both parties presented their evidence, the court rendered decision ordering Eladio Ramos to pay to the plaintiff his obligation of P300, with interest thereon at the rate of 12 per cent per annum, from August 9, 1934, until its full payment, plus the sum of P100 as attorney's fees, and ordering the foreclosure of the mortgage upon failure of Eladio Ramos to pay the judgment within ninety (90) days from the date the decision becomes final. The decision was rendered on August 24, 1939. As Eladio Ramos failed to pay the judgment within the period therein specified, on motion of the plaintiff, the court ordered the sale at public auction of the mortgaged properties, which were sold to the plaintiff as the highest bidder and the provincial sheriff issued the corresponding deed of sale in his favor. The sale was confirmed by the court on April 1, 1941. On August 21, 1947, Romualdo Rivera sold the properties to Felipa Lopez, who later filed a motion praying that she be placed in possession thereof. This motion was granted on September 22, 1947. As the petitioners did not heed the order, they were summoned by the court to explain why they should not be punished for contempt for their refusal to comply with the writ of possession, to which they answered contending that said writ partakes of the nature of an execution, and as it was issued after more than five years, the court acted in excess of its jurisdiction, and that the sale conducted by the sheriff was illegal because petitioners were not properly served with summons as

defendants in the foreclosure suit. The explanation given by petitioners having been found to be unsatisfactory, the court insisted in its order and threatened to punish the petitioners as for contempt of court if they failed to obey the order. Hence this petition for certiorari.

The issues posed by the petitioners relate (1) to the validity of the decision rendered by the lower court on August 24, 1939, in civil case No. 7668, ordering the foreclosure of the mortgage executed by Eladio Ramos on the properties in question; and (2) to the validity of the order of the court dated September 22, 1947, directing the issuance of a writ of possession to place respondent Felipa Lopez in possession of the properties purchased by her from the mortgagee.

As regards the first issue, we are of the opinion that the claim of the petitioners can not be sustained for the reason that it is in the nature of a collateral attack to a judgment which on its face is valid and regular and has become final long ago. It is a well-known rule that a judgment, which on its face is valid and regular, can only be attacked in a separate action brought principally for the purpose (*Gomez vs. Concepcion*, 47 Phil., 717).

Granting for the sake of argument that petitioners were not properly served with summons in civil case No. 7668, as they claim, the defect in the service was cured when the petitioners voluntarily appeared and answered the complaint thru their attorney of record, Lauro C. Maiquez, who appeared in their behalf in all the stages of the case. Since an attorney is presumed to be authorized by his client in a case in which he appears (section 20, Rule 127), Attorney Maiquez who appeared for the petitioners must be presumed to have been authorized by them when he appeared in their behalf in all the stages of the case. The security and finality of judicial proceedings require that the evasions and tergiversations of unsuccessful litigants should be received with undue favor to overcome such presumption (*Tan Lua vs. O'Brien*, 55 Phil., 53). This is specially so when, as in the instant case, it is only after the lapse of more than nine (9) years after the judgment has been rendered that petitioners thought of challenging the jurisdiction of the court.

The second issue raised by the petitioners is not also taken, for the sironle reason that the issuance of a writ of possession in a foreclosure proceedings is not an execution of judgment within the purview of section 6, Rule 39, of the Rules of Court, but is merely a ministerial and complementary duty of the court to put an end to the litigation which the court can undertake even after the lapse of five (5) years, provided the statute of limitations and the rights of third persons have not intervened in the meantime (*Rivera vs. Rupac*, 61 Phil., 201). This is the correct interpretation of section 6, Rule 39, in relation to section 3, Rule 70 of the Rules of Court. This is a case where the judgment involved is already final and executed, and the properties mortgaged sold by order of the court, and the purchaser thereof has transferred them to a third person, who now desires to be placed in their possession. In the exercise of its interlocutory duty to put an end to the litigation and save multiplicity of action, no plausible reason is seen why the court cannot issue a peremptory order to place the ultimate purchaser in the possession of the property.

The general rule is that after a sale has been made under a decree in a foreclosure suit, the court has the power to give possession to the purchaser, and the latter will not be driven to an action at law to obtain possession. The power of the court to issue a process and place the purchaser in possession, is said to rest upon the ground that it has power to enforce its own decrees and thus avoid circuitous action and vexatious litigation (*Rovero de Ortega vs. Natividad*, 71 Phil., 340).

It has also been held:

"In a foreclosure suit, where no third person not a party thereto intervenes and the debtor continues in possession of the real property mortgaged, a writ of possession is a necessary remedy to put an end to the litigation, inasmuch as section 257 of the Code of Civil Procedure (now section 3, Rule 70 of the Rules of

Court) provides that the confirmation of the sale by judicial decree operates to divest all the parties to the action of their respective rights and vests them in the purchaser. According to this legal provision, it is the duty of the competent court to issue a writ so that the purchaser may be placed in the possession of the property which he purchased at the public auction sale and become his by virtue of the final decree confirming the sale." (Rivera vs. Rupac, 61 Phil., 201). Italics supplied.

The following American authorities may also be invoked in support of the order of the lower court:

"A court of equity, having obtained jurisdiction in an action for the foreclosure of the mortgage, and having decreed a sale of the premises, **RETAINS** its jurisdiction and has authority to put the purchaser in possession of the property, without compelling him to resort to an action of law." (27 Cyc, 1937; 42 C. J., 271 and cases there cited.) (Bold types and italics supplied).

"* * * It does not appear to consist with sound principle that the court which has exclusive authority to foreclose the equity of redemption of a mortgagor, and can call all the parties in interest before it, and decree a sale of the mortgaged premises, should not be able even to put the purchaser into possession against one of the very parties to the suit, and who is bound by the decree. When the court has obtained jurisdiction of a case, and has investigated and decided upon the merits, it is not sufficient for the ends of justice merely to declare the right without affording the remedy. If it was to be understood that after a decree and sale of mortgaged premises, the mortgagor, or other party to the suit, or perhaps, those who have been let into possession by the mortgagor, *pendente lite*, could withhold the possession in defiance of the authority of this court, and compel the purchaser to resort to a court of law, I apprehend that the delay and expense and inconvenience of such a course of proceeding would greatly impair the value and diminish the results of sales under a decree." (See Notes to Wilson v. Polk, 51 Am D., 151). (Kershew v. Thompson, 4, Johns, Ch., 609).

Wherefore, the petition is dismissed with costs against the petitioners.

Paras, C. J., Feria, Bengzon, Monternayor and Jugo, JJ., concur.

CONCURRENTE

PABLO, M.,

El 16 de junio de 1948, el Juez del Juzgado de Primera Instancia de Pangasinan ordeno a los recurrentes que compareciesen el 8 de julio del mismo año, a las 8:30 a.m., para explicar sus razones porque no deben ser castigados por desacato por rehusar cumplir la orden de ejecución expedida en la causa civil No. 7668 el 5 de enero de 1948. Los recurrentes presentaron una moción de reconsideración que fue *denegada*. Y acuden ante este Tribunal en un recurso de certiorari. La solicitud debe denegarse, pues contra cualquiera resolución sobre el incidente de desacato pueden los recurrentes presentar apelación. El artículo 1 de la Regla 67 dispone que "Cuando un juzgado, junta, o funcionario investido de facultades judiciales, hubiere actuado sin jurisdicción o se hubiere excedido de su competencia o con grave abuso de ella, y, en la tramitación ordinaria del caso, no existiere el recurso de apelación ni ninguno otro que fuese llano, expedito y adecuado, toda persona por ello agraviada podrá presentar solicitud bajo juramento ante el Tribunal correspondiente alegando con certeza los hechos del caso y pidiendo se dicte sentencia que anule o modifique, con arreglo a derecho, lo actuado por dicho Tribunal, junta o funcionario, con las costas." Esta disposición está interpretada en varias ocasiones:

"Solamente procede el remedio de certiorari cuando un tribunal, en el ejercicio de sus funciones judiciales, hay a actuado sin jurisdicción o con exceso de ella o con grave abuso de discreción y que, en la tramitación ordinaria, no tiene el recurrente el remedio sencillo y expedito de apelación. (Regla No. 67, artículo 1). Si por cada error cometido por un juzgado inferior se permitiese corregirlo por medio del recurso de certiorari, los asuntos serían interminables. Regala contra El Juez del Juzgado de Primera Instancia de Bataan, 44 O. G., 30).

"No. se expedira mandamiento de certiorari a menos que resulte de una manera clara que el Juez contra el cual se dirige procedio sin jurisdiccion o se excedio en ella o abuso gravemente en el ejercicio de su discreccion; no se expedira para subsanar errores de procedimiento o enmendar conclusiones de hecho o de derecho erroneas. Si el Juez tiene jurisdiccion sobre la materia litigiosa y sobre las partes, todo cuando decida sobre las cuestiones pertinentes a la cause son resoluciones que estan dentro de su jurisdiccion y por irregulares o erroneas que sean no pueden corregirse mediante certiorari. (Ong Sit contra Piccio y otros, 44 O. G. 4915.)

"De si el Juzgado inferior erro al dictar ordenes, el error debe suscitarse en una apelacion y no en un recurso de certiorari. Solamente se recurre a este remedio cuando no cabe apelacion. Demaisip y otra contra Makalintal y otros, 47 O. G., Supp. (1) 153.)"

Tenian los recurrentes, en el curso ordinario de los procedimientos, un remedio para corregir cualquier error que pudiera haber cometido el Juzgado.

Por estas razones, es improcedente el recurso de certiorari.

CONCURRING AND DISSENTING

TUASON, J.,

I am in complete agreement with the majority decision on the two propositions formulated in the opening paragraph, namely; (1) that the foreclosure of the mortgage and the sale of the mortgaged property was in accordance with law, and (2) that placing Felipa Lopez in possession of the said property was a natural corollary of the first. But the appealed order also threatens the petitioners with punishment for contempt if they refuse to vacate the lands. This, to me the most important feature of the order, has been ignored or brushed aside in the decision. By its sweeping denial of the petition, this Court sanctions the impending punishment. To this extent, I dissent.

In the case of U. S. vs. Ramayrat, 22 Phil., 183, the Court said:

"A writ of execution to a sheriff directing him to place a plaintiff in possession of property held by a defendant, is not an order to the defendant and a failure or refusal on the part of the defendant to surrender the property does not constitute contempt or disobedience to an agent of authority as defined in art. 252, P.C. It is the duty of the sheriff to place the proper party in possession. Whether a refusal to deliver the property to the sheriff on demand, would constitute contempt, quare.

* * * * *

"A person can not be punished because of his alleged disobedience of an order of court not addressed to him. A writ of execution issued by a justice of the peace to the sheriff directing the latter to place the plaintiff in possession of property held by the defendant, is not an order addressed to the defendant. Such an order must be addressed to an officer of the court and not to either the plaintiff or the defendant. The party in possession may have been unwilling to deliver the land, but such unwillingness does not constitute an act of disobedience to order of an agent of authorities, as defined by art. 252, P.C. The disobedience contemplated by said article consists in the failure or refusal to obey a direct judicial order and not an order which is merely declaratory of the rights of the parties. In the case at bar, while the order does direct that the party in possession shall surrender the property to the proper person, it does not and could not order him so to do. Instead of executing the judgment himself, the sheriff merely ordeid the defendant to deliver the property. A sheriff has no power to require any person to perform an act which he himself is bound to perform. Under such circumstances, disobedience on the part of the person to whom the sheriff gave such an order does not constitute a crime."

Act 3170, subsequently passed, added a new paragraph to Section 232 of the Code of Civil Procedure, reading as follows:

"A person guilty of any of the following acts may be punished as for contempt:

* * * * *

"5. The person defeated in a civil action concerning the ownership or possession of real estate who, after having been evicted by the sheriff from the realty under litigation in compliance with the judgment rendered, shall enter or attempt to enter upon the same for the purpose of executing acts of ownership or possession or who shall in any manner disturb possession by the person whom the sheriff placed in possession of said realty."

But the new enactment has not given courts a new power to punish the recalcitrant loser for contempt before he is evicted. It is only when he reenters or attempts to reenter after he is put out of the land that he is subject to punishment. In the case at bar, the purchaser of the mortgaged property has never been placed in possession thereof by the sheriff, much less have the present occupants been evicted therefrom.

The validity of the lower court's order that is the subject of the present proceedings is not attacked on the ground of lack of authority of the court to punish for contempt for their refusal to quit the lands; but this Court's decision, in keeping silent on this vital point could or would, be construed as a greenlight signal for the respondent Judge to proceed with the enforcement of his said order with all its intended ramifications.

I do not believe that the petitioners' action is punishable as for contempt on another ground. Although they were included as parties defendants in the foreclosure suit, yet the dispositive part of the judgment imposes no duty on them either to pay the mortgaged debt or to make delivery of the mortgaged property. As was said in *U. S. vs. Ramayrat*, *supra*, "the disobedience contemplated by Art. 232 of the Code of Civil Procedure consists in the failure or refusal to obey a direct judicial order and not an order which is merely declaratory of the rights of the parties."

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